

AT A REGULAR MEETING OF THE DUMFRIES TOWN COUNCIL, HELD ON MAY 22, 2012, AT 7:00 P.M., IN COUNCIL CHAMBERS, 17755 MAIN STREET, DUMFRIES, VIRGINIA:

THERE WERE PRESENT: Mayor Gerald Foreman
Vice-Mayor Willie Toney
Dorothea Barr (arrived after roll call)
Kristin Forrester
Michele Jurgensen
Gwen Washington
Vacant seat
Daniel Taber, Town Manager
Christine Sanders, Town Attorney

IN RE: CALL TO ORDER AND ROLL CALL

Mayor Foreman called the meeting to order. Dawn Hobgood, Town Clerk, took roll call.

IN RE: MOMENT OF SILENCE AND PLEDGE OF ALLEGIANCE

There was a moment of silence and then all in attendance recited the Pledge of Allegiance to the Flag of the United States.

IN RE: APPROVAL OF THE MINUTES

There were no minutes available for approval.

IN RE: ADOPTION OF THE AGENDA

Mr. Taber noted that an amended agenda was provided to Council with the following changes. Removal of Item X, C, Appointment to the Northern Virginia Regional Commission – Dan Taber; D, Appointment to the Northern Virginia Cigarette Tax Board – Dan Taber; E, Nominations to the VML 2012 Policy Committee for Finance, Human Development & Education, and Transportation – Dan Taber. Under Item XII, B, the title was changed from Council Lady Forrester’s Research on Legislative Prayer – Kristin Forrester to Continued Discussion/Decision Regarding Council’s Invocation Policy and Letter of Request – Foreman.

Mr. Toney moved, seconded by Ms. Washington, to adopt the agenda as amended.

Ms. Jurgensen noted that the Cigarette Tax Board meets June 7 at 7:00 p.m.

Mayor Foreman would attend that meeting until an appointment is made.

Mayor Foreman made an amended motion, seconded by Ms. Forrester, to further amend the agenda by moving Item XII, B, Continued Discussion/Decision Regarding Council’s Invocation Policy and Letter of Request – Foreman and Item XI, A, Capital Improvement Plan and Public Works Budget Fund Structure – Greg Tkac to just after Mayor’s Comments to accommodate the speakers who are from out of Town.

The amended motion to adopt the amended agenda carried by the following roll call vote: Ms. Barr, absent; Mr. Foreman, yes; Ms. Forrester, yes; Ms. Jurgensen, no; Mr. Toney, yes; Ms. Washington, yes; vacant seat.

IN RE: APPROVAL OF THE CONSENT AGENDA

Mr. Toney moved, seconded by Ms. Forrester, that the Consent Agenda be adopted as presented. The motion carried and the following resolutions were approved by the following roll call vote: Ms. Barr, absent; Mr. Foreman, yes; Ms. Forrester, yes; Ms. Jurgensen, yes; Mr. Toney, yes; Ms. Washington, yes; vacant seat.

AN ORDINANCE TO AMEND THE TOWN OF DUMFRIES FEE SCHEDULE

WHEREAS, the Town Staff initiated the process to amend the fee schedule that was adopted in 2004 for site plan, building & zoning fees and labor/equipment rates; and

WHEREAS, the Town Staff introduced proposed changes to the fee schedule in a discussion meeting with the Town Council at the April 3, 2012 meeting of Town Council; and

WHEREAS, per the request of Council, staff amended the fee schedule for fees to be equal to or less than similar fees found in the Stafford and Prince William County fee schedules; and

WHEREAS, the Dumfries Town Council held a duly advertised public hearing on the fee schedule on May 8, 2012; and

WHEREAS, the Dumfries Town Council finds that the fee schedule proposed by Town Staff, serves a valid public purpose and furthers the goals of the Town of Dumfries Comprehensive Plan.

NOW, THEREFORE BE IT ORDAINED by the Council of the Town of Dumfries on this the 22nd day of May, 2012, the amended fee schedule, attached, is hereby adopted and approved.

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Fee Schedule

for the Town of Dumfries, Virginia

effective July 1, 2012

SITE PLAN REVIEW FEES	
Application	Fee
Nonresidential Site Plan, Multi-Family Site Plan, and major revisions to an approved plan	\$1,000
Single-Family & Townhouse Subdivision Plan, Minor Nonresidential Site Plan, and Grading Plan (over 2,500 square feet)	\$500
Plat Review (Subdivision, easement, consolidation, vacation)	\$350
Waiver request	\$300
Pre-submission Meeting	\$100 per hour per discipline, \$75 minimum
Subsequent reviews and minor revisions to an approved plan	\$100/sheet

The Zoning Administrator and Director of Public Works reserve the right to assign fees for items not shown above.

LABOR AND EQUIPMENT RATES	
Activity	Fee
Labor, without tools	\$25 per hour
Labor, with tools including: Weed eater & cord, weed eater & blade, sidewalk edger, shovels, rakes, pitchforks, grubbing hoe, machete, bush axe, pruning saws, and hand pruners	\$35 per hour
Labor with chainsaw	\$35 per hour
Labor with push mower	\$35 per hour
Labor with riding behind mower	\$45 per hour
Labor with riding mower	\$45 per hour
Labor with tractor & bushhog	\$65 per hour
Labor with dump truck (minimum 5 ton)	\$75 per hour
Labor with pickup truck (minimum 3/4 ton)	\$40 per hour
Labor with stake body truck (minimum 1 ton)	\$50 per hour
Skid steer and attachments with operator	\$60 per hour
Mini excavator with operator	\$65 per hour
Small rubber-tire loader/scratcher with operator	\$65 per hour
Director of Public Works	\$100 per hour
Building Inspector	\$100 per hour
Administration	\$50 per hour

Immediate response services (within 24 hours): additional 50% on labor and equipment rates

The Director of Public Works reserves the right to assign fees for items not shown above.

BUILDING FEES	
Application	Fee
Construction Plan Review	
Residential Plan Review (new construction)	\$300
Residential Plan Review (additions, remodeling, alterations)	\$150
Commercial/Industrial Plan Review (new, additions)	\$300
Subsequent Review Fee	\$100 per sheet
Commercial/Industrial Plan Review (tenant layout, alterations)	\$150
Subsequent Review Fee	\$100 per sheet
Residential Construction Permit Application	
Residential (new construction)	\$700 minimum (Includes permit and 4 inspections*)
Residential (additions, remodeling, alterations)	\$500 (Includes permit and 4 inspections*)
Residential (Decks)	\$300 (Includes permit and 2 inspections*)
Residential (Plumbing)	\$50 permit fee \$100 per inspection**
Residential (HVAC)	\$50 permit fee \$100 per inspection**
Residential (Electrical)	\$50 permit fee \$100 per inspection**
Residential (Occupancy Permit)	\$50 permit fee \$100 per inspection**
Commercial Construction Permit Application	
Commercial (new, additions)	\$1,100 (Includes permit and 10 inspections*)
Commercial (tenant layout, alterations)	\$900 (Includes permit and 8 inspections*)
Commercial (Plumbing)	\$50 permit fee \$100 per inspection**
Commercial (HVAC)	\$50 permit fee \$100 per inspection**
Commercial (Electrical)	\$50 permit fee \$100 per inspection**
Commercial (Occupancy Permit)	\$50 permit fee \$100 per inspection**
Fire Marshal Inspection (sprinklers, fire alarm)	As set by Prince William County Fire Marshal's Office
Other Fees	
Minor Plan Review	Determined by Building Official
Site Inspection (storm sewer, water, sewer lines)	\$150 per inspection
Code Compliance Inspection (requested by customer)	\$200 per inspection
Pre-Design Meeting	\$100 per hour - \$75 minimum
Construction Meeting	\$100 per hour per discipline - \$75 minimum
Reinstatement of Rescinded or Suspended Construction Permit	\$100
Reinstatement of Responsible Parties for Construction Permits	\$100
FAILURE TO OBTAIN PERMIT	\$500 plus cost of Permit

* Additional inspections: \$100 each

** Inspections may be combined into one inspection at \$150

A 2% levy for building fees is already included in the cost shown above.

The Building Official reserves the right to assign fees for items not shown above.

ZONING FEES		
Application		Fee
Buildings, Occupancy, & Accessory Structures		
Zoning Approval for Occupancy (tenant known)		\$25
Zoning Approval for accessory residential structures		\$25
Planning Applications		
Application for Rezoning	For less than 3 acres:	\$2,000 + \$1,000 per acre or portion thereof;
	for 3 or more but less than 6 acres:	\$4,750;
	for 6 or more acres:	a base fee of \$6,250,
		plus the following fee per acre based on desired zoning district:
		residential: \$175;
		B-1: \$150;
		B-2: \$125;
		FB/O-1: \$175; M-1: \$200
Zoning Text Amendment		\$500
Special Exceptions		
Conditional Use Permit (residential)		\$500
Conditional Use Permit (non-residential)	Base fee:	\$500
	Plus:	\$2,500 per acre or portion thereof above 1
	Or, for these specific instances:	
	\$1,250	Adult day care facility or Child care facility over 1 acre
	\$1,750	Religious institution without related services or Veterinary hospital with kennel over 1 acre
	\$5,750	Motor vehicle sales or Religious institution with related services over 3 acres
	\$7,750	Marina over 5 acres
	Board of Zoning Appeals	
Appeal to the Board of Zoning Appeals		\$600
Variance application to the Board of Zoning Appeals (residential)		\$600
Variance application to the Board of Zoning Appeals (non-residential)		\$600
Architectural Review Board		
Certificate of Appropriateness		\$25

For any applications that require public hearings, applicant is also responsible for the cost of advertising such public hearings

The Zoning Administrator reserves the right to assign fees for items not shown above.

ZONING FEES (cont'd)	
Zoning Determinations & Certifications	
Certification of Non-Conforming Use (residential)	\$30
Verification of/interpretation of/changes to Non-Conforming Use (Commercial / Industrial)	\$30
Zoning Interpretations/ Proffer/ SUP Determinations	\$100
Zoning Certification Letter required by banks prior to lending	\$65
Zoning Compliance Certification - Signature of Zoning Administrator required on DMV forms (for Motor Vehicle sales, salvage, vehicle removal operator, etc.)	\$25
Home Businesses	
Home Occupation	\$25
Home Business	\$25
Signs	
Sign (new - also requires building permit, possibly electrical permit)	\$55.00 + \$1.00 per square foot, or \$75, whichever is less
Sign (reface - no building or electrical permit needed)	\$25.00 + \$1.00 per square foot, or \$50, whichever is less
Temporary Sign/ Banner	\$25 *,**
*Fee is waived for a single "Grand Opening" banner for new businesses upon initial start of business	
**Fee is waived once a year for businesses that have supplied proof of BPOL and submitted application for a business license by the required date (but a permit is still required and sign still must conform to Zoning Ordinance)	
*** In these instances, a permit is still required and sign still must conform to Zoning Ordinance	
Temporary Sign Deposit	Minimum \$50, subject to increase by the Zoning Administrator if previous approvals were violated in any way
Temporary Uses	
Temporary Use Permit	Minimum \$25 for small events, \$100 for medium-impact events, \$500 for large events such as carnivals and circuses
Temporary Use Deposit	Minimum \$50 for small events, \$500 for medium-impact events, \$5,000 for large events such as carnivals and circuses, subject to increase by the Zoning Administrator if previous approvals were violated in any way

For any applications that require public hearings, applicant is also responsible for the cost of advertising such public hearings

The Zoning Administrator reserves the right to assign fees for items not shown above.

**RESOLUTION TO AWARD THE DEPARTMENT OF PUBLIC WORKS CONTRACT DPW –
12-04 SITE IMPROVEMENTS TO GINN MEMORIAL PARK TO OLDE TOWNE
LANDSCAPING**

WHEREAS, Town Council on February 21, 2012 approved an ordinance to amend the Capital Improvement Program for Ginn Memorial Park Phase 1; and

WHEREAS, an invitation for bids (IFB) for construction of Phase 1 site improvements for Ginn Memorial Park was issued by the Town of Dumfries (the Town) on March 19, 2012; and

WHEREAS, the IFB was published in the “News and Messenger” on March 22, 2012 and again on March 24, 2012, and posted for ten (10) days at Town Hall and on the Town website; and

WHEREAS, the Town received four bid packages in response to the IFB by April 20, 2012, the due date; and

WHEREAS, bids were opened and read aloud on April 23, 2012; and

WHEREAS, an internal panel of Town staff reviewed the bid packages for completeness, correctness and compliance with the bidding documents; and

WHEREAS, Olde Towne Landscaping of Manassas, Virginia, was determined to be the lowest responsive, responsible bidder; and

WHEREAS, the Virginia Public Procurement Act and the procurement policies duly adopted by the Town of Dumfries have been followed; and

WHEREAS, sufficient funds to construct Ginn Memorial Park Phase 1 have been previously allocated; and

WHEREAS, in accordance with the foregoing, the panel recommends Olde Towne Landscaping to the Dumfries Town Council for approval to enter into a contract with the Town for construction of the site improvements to Ginn Memorial Park as described in the bidding documents and in accordance with Olde Towne’s bid as submitted, in the amount of \$74, 278.00.

NOW, THEREFORE BE IT RESOLVED by the Dumfries Town Council on this 22nd day of May, 2012 awards Olde Towne Landscaping a contract in response to the invitation for bids for site improvements to Ginn Memorial Park (DPW 12-04) in the amount of \$74,278.00, and authorizes the Town Manager to enter into a contract with Olde Towne Landscaping for the purposes thereof.

**RESOLUTION TO COMMEND THE SERVICE OF DEE THOMAS
AS A MEMBER OF THE TOWN OF DUMFRIES
ARCHITECTURAL REVIEW BOARD**

WHEREAS, Dee Thomas served as a distinguished member of the Town of Dumfries Architectural Review Board from July 1, 2007 to June 30, 2011 with dedication and distinction; and

WHEREAS, Ms. Thomas made a significant contribution to persevering the historic character of the Historic District area of the Town; and

WHEREAS, her participation on the Architectural Review Board was instrumental in guiding the Town in developing policies to further the positive growth of our community; and

WHEREAS, throughout her tenure on the Architectural Review Board she demonstrated her sincere commitment to improving the quality of life for the residents and businesses of our community.

NOW THEREFORE, BE IT RESOLVED, that the Town Council for the Town of Dumfries does hereby convey to Ms. Dee Thomas our heart-felt appreciation and commendation for her service, and the exemplary spirit she exhibited in carrying out her duties as a member of the Architectural Review Board for the Town of Dumfries, Virginia.

A Resolution Designating the Town of Dumfries, Virginia as a Lead Agency in Dealing with Issues Concerning Quantico Creek, Port of Dumfries, Quantico Bay, and Its Tributaries

Whereas, the development and history of the Town of Dumfries has been greatly influenced by Quantico Creek, Port of Dumfries, Quantico Bay, and access to adjoining waterways; and

Whereas, the potential for future economic development of the Town of Dumfries is also significantly affected by these same waterways; and

Whereas, Quantico Creek, Dewey's Run, Powell's Creek, Port of Dumfries, and Quantico Bay have suffered the effects of destabilization, erosion, and sedimentation to the detriment of the use of those waterways; and

Whereas, over the past decade or more studies have been conducted concerning the deterioration of Quantico Creek and its tributaries; and

Whereas, over the past decade or more studies have been conducted concerning the sedimentation and invasive species of Quantico Bay and its tributaries; and

Whereas, little or no action has been taken to implement recommendations that have been made in the past as a result of those studies; and

Whereas, it is in the best interests of the citizens of the Town of Dumfries to initiate discussions and organize stakeholders at all levels to work together to identify specific problems and potential solutions associated with Quantico Creek, Port of Dumfries, Quantico Bay, and its tributaries.

Now Therefore Be It Resolved that the Council of the Town of Dumfries does hereby declare that the Town of Dumfries, through the Town Manager, will take a lead role in all matters associated with initiating discussions and organizing stakeholders at all levels to work together to identify specific problems and potential solutions associated with Quantico Creek, Port of Dumfries, Quantico Bay, and its tributaries.

IN RE: CITIZEN COMMENT PERIOD

Eileen Thrall thanked Council for their support dealing with the issues concerning Quantico Creek, its tributaries, and Quantico Bay. It is long, long overdue. She and her husband started writing to the Council governance over 20 years ago. In 2006 and 2007, they were able to get some hydrilla harvested. Then the

situation has since gotten worse in the larger bay of water, so they formed the Friends of Quantico Bay. She noted that she would provide Council with all of her records and support the Council in anyway needed.

IN RE: MAYOR'S COMMENTS

Mayor Foreman made the following announcements.

- Rolling Thunder will be held on May 27. This event seeks to bring full accountability to Prisoners of War (POW's) and Missing in Action (MIA) service members of all wars and past conflicts.
- Memorial Day is May 28, which was originally called Declaration Day. It is a day of remembrance for those who have died in our Nations service, about reconciliation, and coming together to honor those who gave their all.
- Anytime a Council Member's Service concludes the Council pauses, takes note of their achievements, and wishes them well in their future endeavors. Tonight the Council will be saying goodbye to Ms. Jurgensen; however, he did not want to lose sight that there was an election on May 1. Interim Mayor Nancy West, Ms. Barr, and Ms. Washington will be recognized during a ceremony for outgoing and newly elected Council. The Town Manager is scheduling the date for the swearing in ceremony that will be announced shortly.

Ms. Barr joined the meeting at this time.

IN RE: DISCUSSION ITEM(S)

**~~B. COUNCIL LADY FORRESTER'S RESEARCH ON LEGISLATIVE PRAYER~~
~~KRISTIN FORRESTER~~ CONTINUED DISCUSSION/ DECISION REGARDING
COUNCIL'S INVOCATION POLICY AND LETTER OF REQUEST – MAYOR
FOREMAN AND CLOSED SESSION**

Mayor Foreman asked for a motion to go into closed session to discuss the matter. He explained there is a guest present who would be contributing to the discussion. In this particular case there will be three options discussed; reverting back to Council policy that held firm for 200 years, amending the current language of the resolution to not call out any specific religion or faith, or as the Committee discussed going to a moment of silence. He noted that Ms. Forrester had requested a subject matter expert who would like to provide insight and legal advice.

Ms. Forrester made the motion, seconded by Mr. Toney, to go into closed session.

Ms. Sanders requested that the statutory exception be provided to Council that is being used to go into closed session.

Mayor Foreman noted it would be legal consultation if the Council decides to have this individual legally represent the Council.

Ms. Sanders asked if Council has decided to retain this individual.

Mayor Foreman explained that would be the discussion in closed session.

Ms. Sanders did not feel that was an appropriate item for closed session. That statute is to get the advice of legal counsel once retained.

Ms. Forrester pointed out that one of the exceptions mentions if the discussion is of a sensitive nature for which Council could be subject to a lawsuit. She suggested that with the emails received this week that is likely to occur.

Ms. Sanders advised Council that was not her reading of the law. The law specifically defines what probable litigation is. Under the Freedom of Information Act, public bodies may hold closed meetings only for certain exceptions. It is important to understand that it is a “may” hold closed sessions and are not required. She believed the subsection Council is using is Subsection 7. Subsection 7 is consultation with legal counsel and briefings by staff members or consultants pertaining to actual or probable litigation. For the purposes of this subdivision, probable litigation means litigation that has been specifically threatened or on which the public body or its legal counsel has a reasonable basis to believe a known party will commence it. Nothing in this subdivision shall be construed to permit the closure of a meeting merely because an attorney is in attendance or is consulted on a matter.

Mayor Foreman asked if there was an attorney present that Council wanted to take into a closed session would there need to be further preparation and a scope of an agreement.

Ms. Sanders agreed. She was not aware of Council retaining legal counsel other than for an encroachment matter.

Ms. Forrester referenced an email that was sent this week from the American Civil Liberties Union (ACLU) that if Council heads in any other direction then what they advised Council to do that they would seek an injunction against the Town. It has been threatened and the body is known.

Ms. Sanders indicated that if Council wished to go into closed session to discuss the ACLU email she would be happy to do that because she is the Town’s Attorney.

Ms. Barr was not asked if she was or was not going to pray. It has been her understanding over the last four years that her specific job and duties were to manage taxpayer dollars as efficiently and wisely as she could and to not get the Town into indefensible lawsuits. She did not think that her religion or anybody else’s religion matters. It matters on a personal level, but should not matter to others or how she performs her job. She did not believe that the meeting actually starts until after the Pledge of Allegiance. She believes that prayers important and that everybody should have the right to do it, but she does not think that she should force her beliefs on others or that someone else should force their beliefs on her. She noted that this is not just about Jesus Christ, but it is about every other religion in the community. She did not think that a moment of silence was a bad thing. She announced that she would not be going into closed session because she sees it as an illegal meeting.

Ms. Jurgensen asked the ACLU for their opinion and read excerpts from the following letter for the record. She was doing some research and found that Pittsylvania County was in the same sort of bind as the Town.

ACLU of Virginia

530 East Main Street, Suite 310 Richmond, Virginia 23219 (804) 644-8022

May 21, 2012

Dumfries Town Council
17755 Main Street Dumfries
Virginia 22026

Dear Town Council members:

I understand that the Town Council is currently reviewing its policy regarding opening invocations at Council meetings. I write to advise you that according to clear federal court precedent, such prayers must be nonsectarian; that is, they must not reflect any specific religious faith. I urge you to adopt a policy that makes clear to any potential prayer-giver that Town Council prayers must be strictly neutral and nonsectarian.

Obviously, when people pray as individuals, they may do so in any fashion they choose; government may not censor individual prayers. But opening prayers at Town Council meetings are not expressions of individual religious belief; they are official governmental speech. *Turner v. City Council of City of Fredericksburg*, 534 F.3d 352, 355 (4th Cir. 2008); *Simpson v. Chesterfield County Board of Supervisors*, 404 F.3d 276, 279 (4th Cir. 2005). When the government speaks, it cannot play favorites among religions: "The clearest command of the Establishment Clause is that one religious denomination cannot be officially preferred over another." *Larson v. Valente*, 456 U.S. 228, 244 (1982):

This basic principle – that government may not prefer one religious faith over another – holds true in the case of legislative prayer. In *Marsh v. Chambers*, 463 U.S. 783 (1983), the Supreme Court upheld the practice of opening legislative meetings with prayer, but cautioned that the government must not "exploit" the prayer opportunity to "advance any one, or . . . disparage any other, faith or belief." 463 U.S. at 794-95. In a later case, the Court further explained that such prayers may not "have the effect of affiliating the government with any one specific faith or belief." *County of Allegheny v. ACLU Greater Pittsburgh Chapter*, 492 U.S. 573, 603 (1989). "The legislative prayers involved in *Marsh* did not violate this principle because the particular chaplain had 'removed all references to Christ.'" *Id.* at 603.

If this were not clear enough, the Fourth Circuit Court of Appeals – which has jurisdiction over Virginia -- has expressly held that a town council's practice of opening meetings with explicitly Christian prayers violated the First Amendment. *Wynne v. Town Council of Great Falls*, 376 F.3d 292 (4th Cir. 2004). The court observed:

The invocations at issue, which specifically call upon Jesus Christ, are simply not constitutionally acceptable legislative prayer like that approved in *Marsh*. Rather, they embody the precise kind of "advancement" of one particular religion that *Marsh* cautioned against.

Id. at 301-02. The court explained that "[w]hereas the prayers approved of in *Marsh* had been

"nonsectarian" and "civil," the prayers at issue in *Wynne* "contained references to 'Jesus Christ,' and thus promoted one religion over all others, dividing the Town's citizens along denominational lines." *Id.* at 298-99.

Even when legislative prayers are delivered by clergy invited from the public, rather than by government officials, the prayers must be nonsectarian. In *Joyner v. Forsyth County, N.C.*, 653 F.3d 341 (4th Cir. 2011), a county board of commissioners invited clergy from all of the local congregations to deliver prayers. The result was that "almost four-fifths of the prayers referred to 'Jesus,' 'Jesus Christ,' 'Christ,' or 'Savior.'" *Id.* at 344 The court held that this practice was unconstitutional because it "resulted in sectarian invocations meeting after meeting that advanced Christianity and that made at least two citizens feel uncomfortable, unwelcome, and unwilling to participate in the public affairs of Forsyth County." *Id.* at 354. The court explained that sectarian prayers at government meetings undermine one of the main purposes of the Establishment Clause: to prevent division of the populace along religious lines. "To plant sectarian prayers at the heart of local government is a prescription for religious discord. In churches, homes, and private settings beyond number, citizens practice diverse faiths that lift and nurture both personal and civic life. But in their public pursuits, Americans respect the manifold beliefs of fellow citizens by abjuring sectarianism and embracing more inclusive themes." *Id.* at 355.

As a result of these clear precedents, the ACLU of Virginia recently obtained a federal preliminary injunction against Pittsylvania County, Virginia, in which the court ordered the Board of Supervisors to cease its practice of explicitly Christian prayers before Board meetings. *Doe v. Pittsylvania County*, --- F.Supp.2d ----, 2012 WL 363980 (W.D.Va. Feb. 3, 2012).

For these reasons, whatever policy the Town Council chooses should contain provisions to ensure that sectarian prayers are not delivered. Because the line between sectarian and nonsectarian is often difficult to draw, the simplest solution, and the one most respectful of the religious diversity of the Town, is to have either a moment of silence, or no prayer at all. Under these options, every person can pray in the manner he or she deems most appropriate, while the Town itself is not affiliated with any particular religion.

I hope this information is helpful to you as you review your policy.

Sincerely,

Rebecca K. Glenberg
Legal Director

cc: Christine Sanders, Town Attorney (csanders@dumfriesva.gov)

Ms. Sanders noted that her interpretation of Council's current policy would not subject the Town to litigation.

The motion on the floor to convene into closed session carried and the following resolution was adopted by the following roll call vote: Ms. Barr, no; Mr. Foreman, yes; Ms. Forrester, yes; Ms. Jurgensen, no; Mr. Toney, yes; Ms. Washington, yes; vacant seat.

WHEREAS, the Dumfries Town Council desires to discuss a particular subject in Closed Session during the course of its meeting of May 22, 2012; and,

WHEREAS, the nature of the subject is the discussion and consultation with legal counsel regarding probable litigation. The discussion of same in Closed Meeting is expressly permitted by Section 2.2-3711(A)(7) of the Code of Virginia, 1950, as amended.

NOW, THEREFORE, BE IT RESOLVED that the Town of Dumfries does hereby convene in Closed Session for the purpose(s) herein expressed pursuant to the legal authorities herein recited.

Ms. Sanders asked for clarification on who would be going into closed session.

Mayor Foreman noted that Council, the Town Attorney, Town Manager, and Ms. Forrester's guest would be going into closed session.

Ms. Sanders asked that the guest identify himself for the record.

Mr. Doug Anderson, a local lawyer, introduced himself.

Ms. Sanders asked if the Alliance Defense Fund (ADF) employed him.

Mr. Anderson advised that he is not employed by the ADF. He is an affiliated lawyer who does pro bono work and does not receive money.

It was clarified that the only thing that would be discussed in the closed session would be litigation.

Mr. Toney made the motion, seconded by Ms. Forrester, to reconvene into open session. The motion carried and the following resolution was adopted by the following roll call vote: Ms. Barr, abstain; Mr. Foreman, yes; Ms. Forrester, yes; Ms. Jurgensen, abstain; Mr. Toney, yes; Ms. Washington, yes; vacant seat.

WHEREAS, the Town Council of Dumfries has completed its discussion in Closed Session, and now desires to continue its meeting in Open Session; and,

WHEREAS, each and every member of this said Council who votes affirmatively for the adoption of this Resolution does thereby certify that, to the best of his/her knowledge, only public business matters lawfully exempted from Open Session were heard, discussed, or considered during the Closed Session, and that the only subjects heard, discussed, or considered in said Closed Session were the matters identified in the Resolution by which it was convened.

NOW, THEREFORE, BE IT RESOLVED that the Town of Dumfries does hereby reconvene in Open Session at its meeting of May 22, 2012 and certifies the matters set forth in Section 2.2-3712(D) of the Code of Virginia, 1950, as amended.

Mayor Foreman made the motion, seconded by Ms. Barr, to change the wording to a moment of silent prayer and reflection as the new policy for invocation. The motion carried by the following roll call vote: Ms.

Barr, yes; Mr. Foreman, yes; Ms. Forrester, yes; Ms. Jurgensen, yes; Mr. Toney, yes; Ms. Washington, yes; vacant seat.

Ms. Sanders proposed preparing a resolution for Council to adopt that would rescind the previous policy and incorporate the new policy for record keeping at the next Council meeting.

IN RE: INFORMATION ITEM(S)

**A. CAPITAL IMPROVEMENT PLAN AND PUBLIC WORKS BUDGET FUND
STRUCTURE – GREG TKAC**

Mr. Taber explained his plan is to bring forth a very well organized and direct Capital Improvement Plan (CIP) to Council prior to the next budget cycle. He noted that Mr. Tkac is going to verify the priorities in the current CIP, talk about the funding, and how it is dedicated to those priorities. There will be some additional discussion on the Route 1 project.

Mr. Tkac explained that last year was the first year that the general fund included the CIP funds, which caused a lot of confusion, so the items have been removed from the general fund in this year's budget. The number one priority has been and always will be Route 1, UPC 90339, which is the widening of Fraley Boulevard to six lanes. The second project is the Tripoli Boulevard project, which is fully funded, is in the right-of-way and design stage. The third priority is the intersection of Main Street, Graham Park Road, and Fraley Boulevard, which is fully funded, is in the survey stage. The fourth project is the Multimodal Improvement project, and is fully funded. In Phase II of the project includes the construction of sidewalks between Route 234 to where the sidewalks currently are on Main Street and connection of Williamstown Drive to Old Stage Coach Road. Other projects in the CIP are aged and have no funding or have already been completed. The Council approved a task order allowing staff to contract with the Berkeley Group to develop a CIP that will not only include transportation projects but also projects needed from all areas of the CIP. In 2007, Council approved a resolution for widening Route 1 to six lanes. Staff addressed the Commonwealth Transportation Board (CTB) in 2007, 2008, and 2009. Mayor Foreman has been speaking with the CTB since then about different ways to go about expediting funding for the project. During a discussion between Mayor Foreman and Dic Burke, Northern Virginia (NOVA) Programming and Investment Director for the Virginia Department of Transportation (VDOT), a suggestion was made to have VDOT take the lead on the project. VDOT knows where all the funding sources are and that would not eliminate the Town from contributing or working with PWC to come up with alternate funding sources. Jan Vaughan, NOVA Urban Project Manager, was also present to answer any questions that Council may have.

Mayor Foreman explained that every year VDOT has a meeting for the NOVA VDOT. This is where everyone in the region stands up before the CTB and asks for money to fund their projects. He has for the past two years stood before the CTB and asked for funding to widen Route 1. The Town cannot plan for infrastructure, sidewalks, or lighting until Route 1 is widened. Since the Town is the project manager for Route

1, funds are transferred to the Town; however, if VDOT manages the project then other funds available can be used for projects managed by VDOT. He presented to the CTB the following two options. Option 1; request VDOT formally manage the Route 1 Widening Project for the Town of Dumfries. The Town would turn over \$374,000 of Urban Allocation funds to put toward the project. In this way, Route 1 would be a State managed program. The Town Government would continue to work with VDOT. This option would require the Town Council to approve the transfer of management. Option 2; continue annually request funding for this project. The requested funding is in the amount of \$626,000. Option 2; if VDOT does not provide funding, would require funds be raised by the Town's Annual Budget. This in turn creates a heavier burden on the taxpayers. He wrote a letter and Ms. Barr pointed out that the \$374,000 was received for another project. After reviewing this with staff it was determined that the funds were in fact received for another project. He asked Mr. Burke if the funds could be removed from the Route 1 project and used somewhere else.

Mr. Burke explained the funds were from a previous urban allocation that came from a previous Route 1 widening project, so the money can be moved to another urban project within the Town. The project would have to be approved by VDOT, which would require Council passing a resolution, and it has to be in the CIP. He clarified that even if VDOT were to take over the management of the Route 1 widening project there is no guarantee that there will be funds available, as funding allocations have dropped.

Mayor Foreman noted that if VDOT took over the project Council would still be briefed as the project moves forward. If PWC were to continue their efforts for widening Route 1, the Town would not necessarily be excluded from those efforts and VDOT would talk with PWC on the Town's behalf.

Mr. Burke indicated that was correct. He explained that the Town maintains all its roads except Route 1, which VDOT maintains. VDOT would have to go into an agreement with the Town whenever money became available for the Route 1 project and would be a huge stakeholder.

Mayor Foreman noted that the advantage to having VDOT manage the project, instead of going before the CTB requesting a huge amount of money for the Route 1, project that would not be done for at least ten years, the Town could ask for less money to fund another project.

Mr. Burke felt it was still important to make the needs for the Route 1 project known through the CTB, Local, State, and Federal elected officials. The original intent for placing the project in the six-year plan, as he understood it, was because PWC has a widening project to the south and at that time the Route 234 interchange was going to be widened leaving this stretch of Route 1 as a missing link.

Ms. Barr asked what the timeframe would be if the Town turned over the \$374,000.

Mr. Burke did not know. He knows that there have been no urban allocations made for the past three or four years from the State and he did not see that changing in the near future. The \$374,000 being there is an indicator that the Town wants to move forward; however, it is a huge funding gap. The first milestone everyone has been looking for is at least getting to 33 percent of the plan stage, which is a public hearing. Once the public

hearing is locked in, typically any redevelopment would determine the amount of right-of-way that would be needed. There is no guarantee that money will come to this project and there is no timeline for VDOT.

Ms. Barr asked what the benefit would be to turning the \$374,000 over to VDOT when VDOT will already have access and control over it while it is in the coffers.

Mr. Burke explained the determination is who will be managing the project. If the Town still wants to manage the project potentially most if not all of the preliminary engineering money would have to be assembled to get authorization from the Federal government to move the project forward. VDOT might have ways with managing the project, since VDOT knows the components it would take to deliver the project, to be able to start something before the total amount of preliminary engineering money would be needed.

Ms. Barr clarified that if the Town turned over the \$374,000 to VDOT that there is no guarantee that the project will be started in the next three years.

Mr. Burke agreed. Until the six-year plan is approved, which is not until June, VDOT will not know if there will be any additional money available. The other thing would be to continue working with PWC to see if there is any primary road money, which Route 1 is a primary road within the district that can be moved around to different projects.

Ms. Forrester could not support any kind of recommendations right now. She did not think that handing over the management of the project is any different than what is being done now. She is not one who likes to hand over control to another entity whether that be State or the County.

Mayor Foreman explained that the presentation this evening was for information only. He noted that the only change to his letter is going to be the option to be able to move the \$374,000 to another project. If VDOT chooses Option 1, then Mr. Burke will be before Council again to explain how the project is going to be managed and what the Town needs to do.

Mr. Burke noted that if money were found he would definitely brief the Council with the next steps of a potential implementation plan. The funding concerns have gone on for a while.

Mayor Foreman pointed out that it is the Council's option whether to turn the project over to VDOT.

Mr. Burke explained that VDOT would always allow the Town to administer the project. An agreement has not been initiated because there is not enough money to do anything.

Ms. Barr understood that the letter was going to be redrafted and thanked VDOT for coming out and talking with Council.

Mr. Toney asked what the timeframe was for the sidewalks to be extended from Williamstown Drive to Old Stage Coach Road.

Mr. Tkac mentioned that Phase II of the Multimodal Improvement project is scheduled for October 2013.

Mr. Toney asked what the impacts would be to the Multimodal Improvement project with the Route 1 widening project.

Mr. Tkac noted that when dealing with Federal funding there is a process that has to be followed that has 81 or 83 steps called a concurrent engineering process. Many of the steps can be done concurrently; however, many of the steps are time consuming. The right-of-way will have to be analyzed in a completely different way. There are a lot more steps and complications with this project. He mentioned that he could send the process to Council and brief them on all the steps.

Mr. Toney hoped that nothing comes up within the 18-month period that will derail the projects. He understood that it was bureaucracy holding up the project.

Ms. Barr asked how much money was set aside for the Tripoli Heights project.

Mr. Tkac advised there was \$1.8 million.

Ms. Barr asked where that was listed on the report.

Mr. Tkac noted that the report explains what was being done with the general fund budget.

Ms. Barr mentioned the Capital Improvement Budget (CIB) is a living document that goes beyond the year that is coming up and Council is in a budget cycle. There is \$1.8 million dollars out there and Council is in the middle of a budget cycle where certain elements have been removed. She explained that Council needs to be able to identify where the funds are and be able to answer questions that may come up from citizens. She noted that the report shows the following:

Current Item Code	Description	FY12 Budget	Current Amount Available
10-443-9100	CDAR Rd Construction – Tripoli Blvd	\$250,000	\$236,500
10-443-9102	Multi Modal Phase 2	\$50,000	\$50,000
10-443-9103	VDOT Road Construction Projects	\$100,000	\$100,000

She pointed out that Council just heard about an additional \$347,000 that is sitting in an account that might be moved that is not referenced. She asked how much money was set aside for the Main Street project.

Mr. Tkac advised there was \$2.6 million.

Ms. Barr asked how much was set aside for Graham Park.

Mr. Tkac advised there was roughly \$565,000 of regional surface transportation plan (RSTP) money and \$600,000 from other sources.

Ms. Barr noted that was approximately \$1.165 million, is a current project being worked on now, and has not been identified anywhere. She understands the concept of the CIB and understands not having the money in the budget since it is not taxpayer dollars being generated or spent. In prior budgets, there were lists of what the numbers were and this is the first budget where the numbers are nonexistent.

Mayor Foreman explained that the CIP is in the process of being updated.

Ms. Barr noted that a spreadsheet was promised with all the numbers on it.

Mayor Foreman explained that the Town Manager entered this year's budget in the middle and Council knows what he inherited. He explained that next year there would be the the mid-year review, the CIP, and then the budget process. This will allow Council to see the CIP before the budget. He noted that Mr. Tkac has the UPC number to all of the projects that can be presented to Council that accounts for all the money. What is in front of Council now is not close to a CIP or CIB. He asked that before the next meeting that a list be provided of the UPC numbers to Council.

Mr. Tkac noted he would.

Ms. Barr asked that it be provided prior to the public hearing on the budget.

Mr. Tkac explained that what he provided was an explanation of what was being done and is not intended to be a CIP.

Ms. Barr did not have a clear understanding of the money and was promised a spreadsheet.

Mr. Tkac noted that a spreadsheet was provided to Council last Thursday.

Ms. Barr asked why Council did not have it available for tonight's discussion.

Mr. Tkac noted that the spreadsheet has nothing to do with the general fund budget and is the CIB.

Mayor Foreman asked that all of the reports necessary for the budget be presented prior to the budget public hearing so that Council can see all the figures.

IN RE: PRESENTATIONS

A. RESOLUTION TO COMMEND THE SERVICE OF MICHELE JURGENSEN AS A COUNCIL MEMBER – MAYOR FOREMAN

Mayor Foreman presented a resolution commending the service of Michele Jurgensen as a Member of the Town Council.

Ms. Jurgensen thanked Council for their support and the citizens for the opportunity to serve on the Council. She noted it has been a pleasure, challenge, and learning experience serving on the Council.

The resolution was adopted on May 8, 2012.

Ms. Forrester excused herself from the meeting at this time.

BOARDS & COMMISSIONS

A. ARCHITECTURAL REVIEW BOARD (ARB)

Jennifer Stringfellow, Chair, gave the following report.

- Reviewed and approved a certificate of appropriateness for Evolution Auto Care.
- Work continues on the update to the design guidelines specifically to the sections for signs and fencing.

B. BOARD OF ZONING APPEALS

There was no meeting held to report on.

C. HISTORIC DUMFRIES

There was no report given.

D. PLANNING COMMISSION (PC)

Mr. Chris Padberg, Chair, gave the following report.

- No official report is available since the last held meeting was a work session.
- Over the past two meetings, discussions have been held regarding whether to allow mobile food vendors in the Town. The consensus of the PC was to not allow mobile food vendors and felt it was not in the best interest of the Town government or the businesses established, brick and mortar facilities, in the Town. It was noted that the review process for a by-right use or rezoning takes into consideration things such as parking, ingress, egress, and is possibly reviewed through an outside agency that a mobile food vendor would not have to go through. Most of the surrounding localities do not allow mobile food vendors. There are also health and safety issues to consider. The Town uses PWC's Health Department. As it stands, PWC does not have a program that allows mobile food vendors. The code allows for the temporary use of mobile food vendors at festivals, farmers markets, or events put on by an organization. The PC did not think that allowing mobile food vendors on a permanent basis is the direction the Town wants to go.

IN RE: STAFF COMMENTS

A. TREASURER – RETTA LADD

Ms. Ladd was ready to answer any questions that Council may have regarding the monthly financials for April 2012.

B. TOWN ATTORNEY – CHRISTINE SANDERS

Ms. Sanders reported the following items.

- She toured the Potomac Landfill with staff, had a follow-up meeting with their legal representatives, and the matter will be coming back to Council in the future.
- She has been working closely with the transition from David Moss to Morgan Brim as the Town's Planner/Zoning Administrator.
- She has been working closely with the Public Works Department on some nuisance and blight issues in the Town.

Mr. Toney asked if there were any juvenile matters addressed in court.

Ms. Sanders noted that she had a case that was consolidated with PWC.

IN RE: ACTION ITEMS

**A. AMENDMENTS TO THE NOISE ORDINANCE SECTIONS 26-60 THROUGH 26-66
PUBLIC HEARING – CHIEF ROBERT FORKER**

Chief Forker noted the proposed noise ordinance was presented to Council at the May 8 meeting for an amendment. In 2009, the Supreme Court case *Tanner v. City of Virginia Beach* ruled that terms such as unreasonably loud and unreasonably disturbs were too vague to be enforced. Two changes were requested to the

proposal; keeping the penalty as a Class 3 misdemeanor and to change the verbiage to include that an Officer must warn a person prior to enforcement of the code.

The public hearing was opened to public comments.

Leo Lewis felt the code should be in line with PWC for uniformity and the penalty made a Class 2 misdemeanor.

Charles Brewer concurred with Mr. Lewis. He felt there needed to be uniformity when it comes to the courts. He also felt that at some point in time the Town needed to stop slapping hands.

There being no further comments the public hearing was closed.

Clarification was made that the Town would not be in line with PWC with the penalty of a Class 3 misdemeanor and the issuance of a verbal warning. The difference between a Class 3 misdemeanor to a Class 2 misdemeanor is it takes the fine from up to \$500 with no jail time to up to \$1,000 and/or up to six months in jail.

Ms. Barr asked when the last ticket was issued for a violation of the noise ordinance.

Chief Forker did not research that; however, he did not recall any since March 2010 when he started working for the Town. What has been done in the past is a warning is issued, but there are instances where a warning is not practical. An individual can get belligerent or not want to comply with the request.

Ms. Barr asked how many complaints have been made over the past month.

Chief Forker noted he was aware of one.

Ms. Barr asked if the reason for keeping the penalty the same as PWC is that it has been tested to be effective in the court system.

Chief Forker explained that an ad hoc committee was developed through the Local Government Attorneys of Virginia LLC to review ordinances throughout the State who developed this ordinance. PWC has adopted the ordinance almost word for word.

Ms. Barr asked which would be more defensible if it had to go to court.

Chief Forker preferred his original proposal that was made to Council. He has concerns with giving a verbal warning since a violation of the noise ordinance starts over on a daily basis.

Ms. Jurgensen asked if a PWC Officer were to respond to a noise violation whether the Officer could enforce the ordinance.

Chief Forker clarified that a PWC Officer could not enforce the ordinance and could only respond with a verbal warning. The only time a PWC Officer would respond is if the Town's Officer was on another call.

Ms. Jurgensen asked what a Town Officer could do.

Chief Forker explained that a verbal warning could be given, a summons issued, or an arrest can be made.

Ms. Jurgensen asked how that was similar to PWC.

Chief Forker explained that the Town would be marrying PWC's code.

Mr. Toney recalled that a full discussion was held on this matter and a motion was passed.

Mayor Foreman agreed and explained the matter was being further discussed because a public hearing was held and a citizen had a question.

Ms. Washington was concerned with how a record was going to be kept if a violator was warned who continues to violate the noise ordinance.

Chief Forker noted that would have to be worked out since there is not a system currently in place. He mentioned that an Officer would use an activity report to document the incident, which is entered into a database. The problem is retrieving the information as to who has and who has not had a warning.

Ms. Washington could see the incident occurring repeatedly with the same person. For example, warning an individual this Saturday and then next Saturday that same individual does it again.

Mr. Toney felt that good police work would suggest that if you gave an individual a warning this Saturday, he comes back to do it again, that since a warning was given that a summons would be issued. He felt the language that was crafted covered that.

Chief Forker did not agree and had to defer to Council what the definition of a verbal warning is. He explained that if every day was a new day then a warning would have to be given first.

Mr. Toney noted that language could be crafted to cover one warning.

Ms. Sanders drafted the ordinance with the understanding that prior to issuing a summons a warning had to be given first. She took that to mean each incident. An individual could only be cited if an Officer had to return for the same incident. She was concerned with giving one warning and how long that would last. She wanted to do some additional research to include a timeframe on the warning.

Mr. Toney deferred to the Town Attorney to determine the timeframe.

Ms. Sanders felt it should be at the discretion of the Officer as to whether to issue a warning or a summons for each incident.

Mr. Toney advised the ordinance is for noise, not a robber.

Ms. Sanders pointed out that an Officer could choose to give a warning for speeding.

It was clarified that an Officer of the Town could not enforce a PWC ordinance and a PWC Officer could not enforce a Town ordinance; however, the two could enforce State code.

Ms. Barr pointed out that there were citizens who spoke and felt that there needed to be more teeth to the ordinance. As it stands, all the Town Officer can do now is give a warning and issue a summons, which consists of a fine. She felt there needed to be stricter penalties.

Mr. Foreman made the motion, seconded by Ms. Jurgensen, to change the ordinance from a Class 3 misdemeanor to a Class 2 misdemeanor.

Discussion was had on whether the warning should be for a 24-hour period. It was brought up that a noise violation at a home is different from a violation at a business. For example, a warning can be issued at a

business with the expectation that if the individual were to return to the same business that the noise would not occur again.

Mr. Toney supported moving the penalty to a Class 2 misdemeanor. He felt that the discussion concerns two different zones, residential and commercial.

Ms. Sanders explained that the ordinance being presented does break noise down by districts and whether the noise occurs during the day or at night.

Mr. Foreman recommended one warning over a 30-day period.

Ms. Jurgensen asked how it would work if a PWC Officer responds and gives a warning and then a Town Officer is called out the second time.

Ms. Washington felt that the warning should not be in the ordinance and that it should be left up to the discretion of the Officer.

Chief Forker was willing to write a policy that states it is standard practice to give a warning before issuing a summons unless under extreme conditions that would warrant differently.

Mr. Foreman amended his motion to include removing the warning from the ordinance and adding a policy to the general orders that a written warning be given.

Ms. Jurgensen agreed with the amendment.

The amended motion on the floor to change the penalty from a Class 3 misdemeanor to a Class 2 misdemeanor, remove the warning language, and that a policy be crafted to be included in the general orders to give written warnings carried by the following roll call vote: Ms. Barr, yes; Mr. Foreman, yes; Ms. Forrester, absent; Ms. Jurgensen, yes; Mr. Toney, no; Ms. Washington, yes; vacant seat.

It was clarified that the ordinance would come back before Council for another public hearing with the changes requested.

B. DECISION ON ENTERING INTO A MEMORANDUM OF UNDERSTANDING WITH PRINCE WILLIAM SOIL & WATER CONSERVATION DISTRICT FOR EROSION AND SEDIMENT CONTROL MONITORING – ~~RICHARD WEST-GREG~~ TKAC

Mr. Tkac noted that in order to provide sufficient inspection capabilities for existing and future projects, Public Works seeks to enter into a memorandum of understanding with the Price William Soil & Water Conservation District for erosion and sediment control monitoring services.

Ms. Barr moved, seconded by Ms. Washington, to enter into a memorandum of understanding with the Prince William Coil & Water Conservation District. The motion carried by the following roll call vote: Ms. Barr, yes; Mr. Foreman, yes; Ms. Forrester, absent; Ms. Jurgensen, yes; Mr. Toney, absent; Ms. Washington, yes; vacant seat.

Mr. Toney stepped out of the room and was absent for the roll call vote.

**RESOLUTION TO ENTER INTO A MEMORANDUM OF UNDERSTANDING BETWEEN
THE TOWN OF DUMFRIES AND THE PRINCE WILLIAM SOIL & WATER
CONSERVATION DISTRICT**

WHEREAS, Town Council enacted an Erosion and Sediment Control Ordinance to prevent degradation of properties, stream channels, waters and other natural resources of the Town of Dumfries; and

WHEREAS, the Town has established a local erosion and sediment control program pursuant to the Code of Virginia, § 10.1-562; and

WHEREAS, the Department of Public Works is designated as the plan approving authority; and

WHEREAS, the Department of Public Works is required by the local erosion and sediment control program to periodically inspect the land disturbing activity in accordance with section 4VAC50-30-60 of the Virginia Erosion and Sediment Control Regulations to ensure compliance with approved plans and to determine whether the measures required in such plans are effective in controlling erosion and sedimentation; and

WHEREAS, the Department of Public Works anticipates a near-term demand for erosion and sediment control inspections that exceeds current staff's capacity; and

WHEREAS, the Prince William Soil & Water Conservation District has the capability to provide certified inspectors on an on-call basis.

NOW, THEREFORE BE IT RESOLVED that the Dumfries Town Council on this 22nd day of May, 2012, authorizes the Town Manager to enter into a memorandum of understanding with the Prince William Soil & Water Conservation District for the purposes thereof.

IN RE: DISCUSSION ITEM(S)

**A. UPDATE ON CONSIDERING AN AMENDMENT TO SECTION 70-22
TEMPORARY USES FOR MOBILE FOOD VENDORS – MORGAN BRIM**

Mr. Brim reminded Council that during the May 8 meeting staff was directed to have the PC consider the allowance of mobile food vendors as an amendment to Section 70-22 "Temporary Uses". Currently code does not allow them; however, code does allow for use of mobile food vendors in a larger event setting. The PC was unanimous to not allow the use of mobile food vendors. The following are concerns the PC has:

1. Traffic conflicts with pedestrians and vehicles,
2. Limited parking stock,
3. Temporary businesses undercut established Town businesses,
4. Difficulty in ensuring meals taxes are paid and ensuring health standards that are applicable to existing businesses, and
5. PWC, Stafford County, City of Manassas, Manassas Park, and City of Falls Church do not allow mobile food vendors for the reasons listed above.

Ms. Jurgensen pointed out there is a smoker and a stack of wood in a parking lot just before Town Hall that has been there for quite some time. She was discouraged because there are other localities that are permitting roadside vendors.

Mr. Brim noted that staff is aware of the smoker and is in the process of issuing a violation.

Ms. Jurgensen asked if the violation is being issued to the owner of the smoker or the owner of the parking lot.

Mr. Brim noted the violation would be issued to the property owner.

Mr. Foreman advised that PWC's Police Department issues a peddler's permit. In order to obtain the permit in PWC the vendor has to have the following items:

1. \$5,000 Bond
2. Criminal Check
3. Health Permit
4. Business License
5. Zoning Permit

The types of vendors are ice cream trucks, which are seasonal and zoned, crab trucks, which are seasonal and zoned, chuck wagons, which are for construction sites and are issued a peddler's permit and zoned. BBQ vendors are not legally permitted; however, a peddler's permit will be issued for a specific event such as a farmers market. He recommended that staff come back with some kind of structure so that the vendors provide the Town with the same type of things that PWC requires. He wanted the vendors to hold a business license even if it is a onetime fee because most of the business is cash only. If the PC does not want mobile food vendors to operate, we need to say why. There needs to be criteria for a mobile food vendor for when it can operate, where it can operate, and under what specific events.

Ms. Barr asked when the Town did something regarding the ice cream trucks.

Mr. Brim did not know.

Ms. Barr asked when it was allowed in the ordinance.

Mr. Brim did not see where ice cream trucks were permitted in the ordinance.

It was clarified that it is PWC who allows ice cream trucks.

Ms. Barr noted the Town needed to find a way to embrace small businesses as well as big businesses without treading on the bricks and mortar businesses. She noted that some of the micro-businesses are offering something that the citizens want and are not necessarily in competition with other businesses. She felt there had to be a way that this could be done.

Mr. Brim pointed out that the ordinance would have to apply to all mobile food vendors.

Ms. Washington after reviewing the packet thought that Cydney Neville, Director of Community Services, was going to be looking into it and was thinking that it was going to be allowed at events such as a

farmers market. She felt the vendors needed to be in a specific place. She thanked the PC for taking the time to look at all the concerns and issues that can arise from these type of uses in the Town.

Ms. Jurgensen pointed out that peddler's are setting up on the weekends in the Dumfries Shopping Center already when there is no enforcement.

Mr. Padberg, PC Chair, did not feel that legalizing a problem solves it. The PC is not saying that there is no room for an ice cream truck. He noted that the matter was presented to the PC more as a mobile food vendor. From a planning and zoning perspective, this needs to be taken slow. Historically the Town has allowed things that the County has not and this would be yet another one. The attitude in the County on issues like this is you cannot do it here but go down to Dumfries because they are wide open for this. The PC is looking at this as not being offered by any surrounding localities, so maybe a good look should be taken before allowing it. He felt the matter should be vetted through the Dumfries Business Association to see what they say.

Mr. Foreman reiterated that there has to be a standard for which to operate. Take a look at PWC and take it from there.

Mr. Brim understood the direction from Council is to pull in those ideas and look at the standards being placed through PWC to be taken back to the PC.

Mr. Foreman noted that the idea is to look at the standards with the PC and bring back those standards to Council to safeguard other businesses, citizens, and the Town.

Ms. Washington noted that the big thing was going to be with the health department. She suggested looking at some of the other surrounding areas as well.

IN RE: COUNCIL MEMBER COMMENTS

Ms. Washington thanked Ms. Jurgensen.

Ms. Barr expressed gratitude to Ms. Jurgensen.

IN RE: ADJOURNMENT

Ms. Barr moved, seconded by Ms. Washington, to adjourn the meeting. The motion carried by the following voice vote: Ms. Barr, yes; Mr. Foreman, yes; Ms. Forrester, absent; Ms. Jurgensen, yes; Mr. Toney, yes; Ms. Washington, yes; vacant seat.

Minutes submitted by

Approved by

Dawn Hobgood
Town Clerk

Gerald M. Foreman
Mayor